IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8364 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 NO

C O KAKKAD

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8364 of 1988

MR PV HATHI for Petitioner No. 1

MR AJ DESAI AGP for Respondent No. 1

RULE SERVED for Respondent No. 2

MR ASIM J PANDYA for Respondent No. 3

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 12/10/2001

C.A.V. JUDGEMENT

1. By this petition under Article 226 of the

Constitution, the petitioner has challenged the order of reversion dated 15.12.1988 and claimed the benefits consequential to the said order being set aside.

2. The petitioner, who was working under the Executive Engineer in the Roads & Buildings Department, had become eligible for promotion in February 1978 upon completion of eight years of service as a Supervisor. However, when a junior to him was promoted, he approached this Court by way of Special Civil Application No.549 of 1979 in which, allowing the petition, the respondent was directed to consider the claims of the petitioner for promotion with effect from the date on which the petitioner's junior was promoted and also to extend to the petitioner all the consequential benefits if his case was otherwise fit. The adverse confidential remarks, which were not communicated to the petitioner but which were cited in defence of non-consideration of the petitioner's case, were categorically directed to be ignored while assessing the merits of the petitioner. Pursuant to such order, the petitioner was temporarily promoted to the post of Deputy Executive Engineer by the order dated 4.6.1981. After working on the promotional post for about seven years, the petitioner was repatriated to his parent department by the order dated 31.8.1988 and no fresh posting order was issued. Upon enquiries, the petitioner learnt that an order of reversion was being issued and, therefore, he rushed to this Court with a view to protect his position and pay. It is contended by the petitioner that the officers in the same rank who were juniors to the petitioner were promoted with or subsequent to the promotion of the petitioner in 1981.

3. By filing affidavits-in-reply, it is stated on behalf of the respondents that the promotion given to the petitioner was temporary and in anticipation of consent of the Gujarat Public Service Commission (GPSC), that the opinion of the GPSC was adverse and that the adverse confidential remarks were communicated to the petitioner for the years 1978-79, 1979-80 and 1982-83. It was submitted that the criterion for promotion to the post of Deputy Executive Engineer was not only seniority but it was proved merit and efficiency; that the petitioner's case was considered on three occasions by the departmental promotion committee and that as he was found fit for inclusion in the select list dated 30.6.1980, a proposal was sent to the GPSC who expressed an adverse opinion; that long period had elapsed in correspondence with the GPSC, during which time, the petitioner's posting on the promotional post continued and ultimately

he had to be reverted by the impugned order dated 15.12.1988. When an issue was raised by the petitioner in his rejoinder that even after inclusion of his name in the select list of 1980, the GPSC appeared to have relied upon the same old adverse remarks which were ordered to be ignored by the High Court, it was further stated by an affidavit of the Under Secretary that the GPSC had reconsidered the case of the petitioner after being aware about the order of this Court directing to ignore the adverse remarks. As against that, the petitioner has averred that he was promoted in August 1981 after inclusion of his name in the select list prepared in June 1980, he had worked on the promotional post upto 15.12.1988 and even the GPSC had recommended inclusion of his name in the select list of June 1987. Therefore, there was no valid reason or justification for issuing the impugned order of reversion. Even as the pendency of this proceeding was prolonging, the petitioner had retired from service in 1995 with the net consequences of substantial reduction of pension due to break of service from 15.12.1988 to 17.12.1989 besides loss of pay for that period.

4. Upon the GPSC being joined as a party respondent in this proceeding, it is supposed to have filed an affidavit-in-reply but such affidavit was nowhere found on the record even as a rejoinder to such affidavit was filed by the petitioner. By a copy of the affidavit supposed to have been filed by the GPSC in Civil Application No.8336 of 2000 in this petition, it was shown on behalf of the petitioner that the GPSC had given its opinion to exclude the name of the petitioner from the select list dated 30.6.1980 on the basis of confidential reports for the year 1977-78, 1978-79 and 1979-80 which were ordered to be ignored. The subsequent recommendation of the GPSC to include the name of the petitioner in the select list dated 30.6.1987 was communicated by its letter dated 23.8.1989.

5. The fact which emerges from the record is that the petitioner was promoted to the post of Deputy Executive Engineer in 1981 after his name being included in the select list and again he was posted and continued in the same post since the year 1989 on the basis of inclusion of his name in the select list and after express approval of the GPSC. Therefore, the impugned order of reversion and the break in service created for the period from 15.12.1988 to 17.11.1989 was irrational, arbitrary and in no way justified. It also appears that the earlier adverse opinion of the GPSC was based on the adverse confidential remarks for the year 1977-78,

1978-79 and 1979-80 even though they were directed by a judicial order to be ignored.

6. In the facts and for the reasons discussed hereinabove, the petition is partly allowed, the impugned order dated 15.12.1988 is hereby set aside and the respondents Nos.1 and 2 are directed to refix the pay and pension of the petitioner accordingly as also to pay the arrears of all consequential benefits, including the due difference of pay for the period from 15.12.1988 to 17.12.1989, within three months of the receipt of a copy of this order. In the facts and circumstances, there shall be no order as to costs. Rule made absolute accordingly.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)